



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Northwest Region  
7600 Sand Point Way N.E., Bldg. 1  
Seattle, WA 98115

January 20, 2004

Ruth Monahan  
Forest Supervisor  
Sawtooth National Forest  
2647 Kimberly Road East  
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Re: Amendment to Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for Outfitter/Guided Commercial & Non-Outfitted Floatboating and Walk/Wade Special Use Permit Renewals (2 projects)

Dear Ms. Monahan:

This letter serves to amend NOAA's National Marine Fisheries Service's (NOAA Fisheries) July 16, 2003, biological opinion (Opinion) on the subject actions. The Opinion addresses Sawtooth National Forest's (SNF) new program of administering Floatboat and Walk/Wade outfitting and access that will begin in 2004 and continue through the 2008 summer/fall activity seasons. Per SNF and applicants' request, the Opinion had previously been amended (September 26, 2003, letter from NOAA Fisheries to SNF) to revise the start date for initiation of commercial boat limits from a set date to when the first redd occurred. This letter further addresses commercial boat limits and supercedes the September 26, 2003, amendment of the Opinion. This letter also addresses extension of the floatboating season through September 2 each year.

During and after the 2003 Floatboating season, SNF and NOAA Fisheries received comments and proposals from SNF's applicants regarding the commercial floatboat permits that will go into effect in 2004. The discussions included an October 27, 2003, meeting between two of the floatboat outfitters, SNF, NOAA Fisheries, and U.S. Congressional staff. That meeting was followed with a December 16, 2003, letter from the outfitters to SNF and NOAA Fisheries including a request for two main revisions to the proposed permit: (1) removing the proposed specified boat limits (8 per permit per day; 48 total per day) so there is not a limit on commercial floatboats, and (2) closing the river after September 2, instead of the proposed closure after August 28.

The SNF subsequently contacted NOAA Fisheries (January 8, 2004, telephone conversation and email) and discussed the outfitters requests, with additional details regarding the permits and how they would be implemented. NOAA Fisheries agreed to analyze those two changes to the proposed action and amend the Opinion as appropriate.



In this letter that amends the Opinion, NOAA Fisheries evaluates the proposed changes in the floatboating action as provided under section 7(a)(2) of the Endangered Species Act (ESA) and its implementing regulations, 50 CFR part 402, and section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and its implementing regulations, 50 CFR Part 600. The Walk/Wade action remains unchanged; therefore, it is not re-analyzed in this amendment.

## **I. ANALYSIS OF EFFECTS WITH PROPOSED CHANGES IN ACTION**

NOAA Fisheries determined that the proposed change in the action would result in a small, unquantifiable increase in adverse effects on ESA listed Snake River spring/summer chinook salmon compared to the effects described in the Opinion. The reasons for that finding are described below.

### **A. Removing Boat Limits**

The September 26, 2003, Opinion amendment addressed a proposal to institute boat limits in the lower section of the upper Salmon River (below Stanley, Idaho) when redds are first identified, rather than on the set date of August 15 as in the prior proposal and analyzed in the Opinion. The SNF has now proposed that there will not be limits on commercial boats. Paraphrasing from the Opinion's Analysis of Effects (p. 22), key measures to ensure disturbance of spawning chinook salmon is avoided/minimized involve knowing where the spawning is occurring (via the daily surveys) and identifying and implementing routes through those areas away from the spawning fish. NOAA Fisheries noted that boat limits were relevant in that the likelihood of mistaken routes (e.g., boats passing over or near redds) increases with the number of boats. It was not known if 48 commercial boats or some other number ensures effective avoidance/minimization of disturbance; however, the 48 boat limit at least provided a finite level of usage which could be monitored and adjusted if not effective.

Based on further consideration and additional information from SNF and outfitters, NOAA Fisheries finds that the removal of boat limits likely causes little added risk of disturbing spawning fish. The SNF and outfitters provided support for that conclusion both in describing the interplay between guided boats and boat rentals, and in displaying the reduced numbers of floatboat clients at that time of the season.

NOAA Fisheries considered the interplay between guided and rental boat numbers. As outfitters and SNF explained, if a group of clients seeks a guided trip and an outfitter in the past has not been able to accommodate the whole group due to boat limits, the outfitter often either refers the group to another outfitter or rents boats to the extra users, who float the river unguided. In those

cases, having commercial (guided) boat limits does not ultimately reduce the total number of boats on the river, but just shifts use to rented boats. Outfitters have noted that, because they are generally more experienced with implementing measures to avoid spawning fish than non-outfitted floaters, there will be better protection of spawning fish when a greater proportion of the boats are guided. That is, the removal of boat limits would shift use to fewer rented and more guided boats, and thus (in the outfitters view) improve implementation of fish protections.

The shift from guiding to rentals (thus not affecting total boat numbers) would not always occur, so it is possible for removal of boat limits to result in a net increase in usage on the river and thus greater potential risk to spawning chinook salmon. There are, however, indications that even without boat limits actual commercial boat use is unlikely to exceed approximately 60 boats on any given day when salmon redds are present, and will typically involve far fewer boats. The SNF provided data for commercial use from August 20<sup>1</sup> through September 2 over the last three years (January 8, 2004, email from Eric McQuay, SNF, to Ken Troyer, NOAA Fisheries). The average total daily number of commercial boats for that time period ranged from 9 to 18 boats per day during the three years. The highest usage on any one day was 39 boats on August 20, 2003; and there was only one instance of more than 20 boats after August 24. While those data also show that on a few days individual outfitters did reach their boat limit, and perhaps would have run more boats if the limits had not been in place, generally the demand for commercial floatboating appears to be noticeably reduced by late August.

The SNF, based on information from the outfitters, estimated that the removal of boat limits would result in a 25-50% increase in commercial use. Converting the numbers from the previous paragraph with that estimate, the average total daily commercial use after August 20 may be approximately 13 to 27 boats per day, and highest single use day during the latter part of August (39 boats from recent data) may be approximately 60 boats. The SNF also noted that of the total of 147 boats owned by the four outfitters, approximately 60 boats are used on this section of the Salmon River (December 10, 2003, phone conversation between Terry Clark, SNF, and Ken Troyer, NOAA Fisheries). Again, as noted above, to some extent projected increased commercial use would correspond with a reduction in the rental business that previously had been necessitated by boat limits, so the absolute increase in use (guided and unguided) may be less than 25-50%.

Based on the information SNF and the outfitters provided, NOAA Fisheries assumes that for the time period beginning August 20, boat usage will continue to be 60 boats or less even without

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<sup>1</sup> Chinook salmon redds typically have not been found in that section of the Salmon River until after August 20.

boat limits, and therefore will provide an amount of use the effectiveness of which can be monitored as noted in the Opinion (p. 22). This assumption is further addressed in the Revised Term and Condition section of this amendment (below).

## **B. River Use From August 29 through September 2**

The SNF proposed that commercial and private floatboating through August 28 would occur as described in the Opinion (with the noted change removing boat limits), and that an additional use period, August 29 through September 2, would be permitted with certain stipulations (January 8, 2004, email from Eric McQuay, SNF, to Ken Troyer, NOAA Fisheries). The stipulations are: (1) required portages around or take-out before Indian Riffles and Torrey's Hole; and (2) implementation of the quiet zone/redd avoidance measures for identified redds outside those two areas, with possible closures or portages at those sites if redds cannot otherwise be avoided (in keeping with Opinion Term and Condition 3e; Opinion p. 32). There would also not be boat limits during this time period, as recent years use data show low demand for floatboating during those days (refer to discussion below).

Extending the use period does increase the risk of adversely affecting spawning spring/summer chinook salmon beyond what was described in the Opinion. In the Opinion, NOAA Fisheries discussed the sudden increase in spawning activity (from a few redds to substantially more) that in most years has occurred in the last few days of August or first few days of September. The SNF provided additional data, including redd counts from 2003, on the occurrence of redds by day over most of the last twelve years (December 17, 2003, FAX from Eric McQuay, SNF, to Ken Troyer, NOAA Fisheries). Those data show that the sudden increase in spawning activity has occurred on August 30 on average over the years. Those SNF data also show that, whereas 8% of all redds have occurred by August 28, approximately 30% have occurred by September 2 over the years. So the proposed added five days of use change the potential impact from a small fraction to approximately one-third of salmon run.

The SNF notes, however, that the majority (approximately 70%<sup>2</sup>) of the spawning that has occurred by September 2 over the years has been in Torrey's Hole and Indian Riffles, and having portages at those key spawning areas will greatly reduce the number of redds that must be avoided initially through other measures such as quiet zones and boat routing away from redds (January 8, 2003, telephone conversation between SNF staff and NOAA Fisheries). In addition to being able to focus floatboat administration on protecting the subset of the redds that are not necessarily portaged-around, SNF also anticipates use of the river will be low enough to manage redd avoidance effectively during that 5-day

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<sup>2</sup>Calculated from the years' cumulative redd counts that are within and outside Torrey's Hole/Indian Riffles by September 2.

period. Over the last three years, an average total of six commercial boats per day have used in that section of the river during August 29 through September 2. The SNF has also found that use by private boaters has been comparably low during that time period.

Another element that is expected to contribute to effective redd protection during this time period is SNF's experience. Over the last several years floatboating has been administered for 2 to 3 weeks each year similarly to what is proposed for the 5-day period, that is with portages implemented at Indian Riffles and Torrey's Hole and initially other redd avoidance measures at other locations. The SNF has found that avoiding/minimizing disturbance of spawning chinook salmon and redds does become increasingly complex and staff intensive as redd numbers increase; however, SNF commits to continue this program for the 5-day period and will seek assistance from other entities, such as Idaho Department of Fish and Game and NOAA Fisheries, to further strengthen implementation of the program, especially through monitoring/adjustments.

In summary, the added 5-day use from August 29 through September 2 is expected to increase the potential for adverse effects on spring/summer chinook salmon from what was considered in the Opinion; however, a very high degree of protection of spawning fish can be and is expected to be maintained. The added 5-day use period is likely to overlap with a third or more of the spawning activity in a given year. The portages at Indian Riffles and Torrey's Hole are expected to eliminate approximately 70% of the floatboating/spawning fish intersection, leaving approximately 10% (30% not addressed by Torrey's Hole and Indian Riffles multiplied by one-third of the run typically present by September 2) of the spawning chinook salmon/redds protected primarily by the redd avoidance/quiet zone measures during that five day period. NOAA Fisheries expects that SNF will be effective in ensuring floatboats avoid disrupting the spawning of that 10% of the salmon run given: (a) daily surveys that identify redds, (b) directions to outfitters and private boaters to avoid redds, (c) on-the-river permit administration to ensure that the avoidance measures are implemented, (d) likely low levels of floatboat use of the river during this 5-day period, and (e) substantial experience and success SNF has had in recent years with longer periods of permit administration that was essentially the same as what will occur during those five days.

## II. CONCLUSION

In summary, with the proposed changes in the floatboating action, NOAA Fisheries finds that the action is not likely to jeopardize the continued existence of ESA listed Snake River spring/summer chinook salmon or result in destruction or adverse modification of their designated critical habitat. NOAA Fisheries also concludes, as in the Opinion, that the action will not adversely affect designated Essential Fish Habitat (EFH) for chinook salmon.

All the requirements of the Opinion (clarified proposed action and Terms and Conditions) remain in effect, with the exception of boat limits and use dates that are modified as described in this amendment. The Opinion's Conservation Recommendations and Incidental Take Statement are augmented/revised as noted below.

This concludes ESA consultation on this action in accordance with 50 CFR 402.14 (b)(1), and MSA consultation in accordance with 50 CFR 600.920 (e)(3). The SNF must reinitiate consultation on this action if new information becomes available, or if circumstances occur that may affect listed species, designated critical habitat, or may adversely affect EFH in a manner, or to an extent not previously considered.

### **III. ADDITIONAL CONSERVATION RECOMMENDATION**

(The following Conservation Recommendation is carried over from the September 26, 2003, amendment to the Opinion. While that amendment is otherwise superseded by this amendment, the conservation recommendation is retained.)

The Conservation Recommendation described below is added to the July 16, 2003, Opinion based on discussions with SNF and outfitters. Some of the outfitters, in discussing their concerns with SNF and NOAA Fisheries, have also offered ideas on additional steps they can take to minimize the effects of floatboating on spawning salmon.

*Conservation Recommendation #7:* The SNF should encourage the outfitters and public to take further steps to minimize the duration and amount of disturbance to fish within quiet zones. The measures can include rafting two or more kayaks together through quiet zones so their profile is similar to one raft, navigating multiple boats through quiet zones in close succession so the frequency of potential disturbance is reduced, and keeping boats well beyond 25 feet from redds where possible.

This Conservation Recommendation, if implemented, can increase the effectiveness the floatboating program shows through monitoring, and increase the number of techniques for future use in protecting salmon reproduction while maintaining the floatboating business and recreational opportunities.

### **IV. INCIDENTAL TAKE STATEMENT**

#### **A. Amount or Extent of Take**

The description of the Amount or Extent of Take in the Opinion (pp. 25-27) continues to apply, with clarifications made in this letter.

With the two modifications to the proposed action (removing boat limits, and extending use through September 2, with stipulations) NOAA Fisheries continues to anticipate a very low level of incidental take in years of low to average salmon returns, and a somewhat greater (but still low) level of incidental take of in years of increased run size and/or early runs. The potential for take arises primarily from SNF and floatboaters operating based on the previous day's redd survey information when there may be new spawning activity that day that boats will float over and disrupt. That potential for take does increase with the modification of the action to allow floating, with restrictions, through September 2. As noted in the Effects discussion above, that potential for take is limited by the likelihood that only a fraction of the spawning activity (approximately 10%) is exposed, and the likelihood that few floatboats will be on the river during those additional five days of floatboat season, reducing the probability of repeated displacements of fish resulting in redd abandonment. As the Opinion also notes, take associated with disruption of those early stage spawning activities may also be somewhat reduced by the lesser energy investment that fish have in redd construction at that stage.

With respect to known spawning areas and identified redds, the incidental take described in the Opinion continues to apply (refer to Opinion final paragraph under Amount or Extent of Take). That is, only one incident of take, to the extent of abandonment, is authorized. The SNF quiet zones, redd avoidance, and other required measures (e.g., per Term and Condition 3e) are expected to avoid or minimize disturbance to spawning fish to the extent that the disturbance would not be expected to result in the abandonment of redds.

NOAA Fisheries' expectation for SNF to ensure floatboating greatly minimizes take thus remains the same as in the Opinion, although there will be an added 5-day period of use. This requirement particularly emphasizes the importance of consistent implementation of boats steering away from redds (where portages are not in place) and monitoring/adjustments to better define and implement distances for boats to stay away from redds such that, with a high degree of consistency, fish are displaced from redds no more than infrequently, and do not abandon redds due to floatboat activity.

## **B. Revised Term and Condition Related to Removal of Boat Limits**

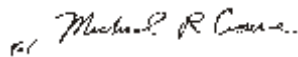
*Opinion Term and Condition 2a, paragraph 2* (Opinion p.29) is modified as follows to ensure the NOAA Fisheries' assumption about boat limits is monitored and adjustments are made, as necessary, based on monitoring results:

*Prior to the 2004 floatboating season, the SNF will work with NOAA Fisheries to develop the specific effectiveness monitoring protocol that will be followed in 2004 and subsequent years. A component of this protocol shall be tracking effectiveness in relation to the number of boats that are on the river and passing through river reaches that have redds.*

*The monitoring protocol shall include a tracking threshold for boat numbers such that, during the time period redds are present, if the total number of commercial floatboats exceeds 60 per day, SNF will immediately contact NOAA Fisheries to discuss the usage, pertinent monitoring results (e.g., how well redds were avoided in quiet zones with higher boat numbers), and if adjustments need to be made. Adjustment options include but are not limited to: portages, limiting boat numbers, different techniques on the river by SNF or floatboaters to avoid redds consistently at higher boat numbers, concentrating the window that boats pass through sections of river with redds so that the number of repetitions of potential disturbance is substantially reduced, etc.*

If there are questions or comments related to this amendment of the July 16, 2003, Opinion or other aspects of this ESA and MSA consultation, please contact Ken Troyer at (208) 378-5692.

Sincerely,



D. Robert Lohn  
Regional Administrator

cc: J. Foss - USFWS  
S. Baldwin - USFS  
T. Clark - USFS  
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D. Parrish - IDFG  
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